

- (2) The High Court or Session Court or District Magistrate may also order further enquiry into complaints dismissed under section 203, or into the case of *any accused* person discharged.
- (3) The Session Court or District Magistrate may report any illegality,\* or excessive or insufficient punishment to the High Court.

The High Court has power to remedy every defect as described in section 439<sup>r</sup>

When exercising these powers of revision, no one has any *right* to be heard, but the High Court *may*, if it thinks fit, hear such person either personally or by agent<sup>s</sup>. (Section 440.)

#### SECTION X.—TRIAL OF EUROPEAN BRITISH SUBJECTS.

As forest offences may be committed by European British subjects, it is necessary briefly to indicate the provisions specially made regarding their trial.

The reason why such provisions are made, is simply that European British subjects carry their own law with them, and cannot, by the act of coming to India, be deprived of certain rights which are inherent in their nationality; so that, at least in essential points, they are entitled to have the same advantages on trial in India, as they would have in England or the Colonies. The right to be tried by a jury in all cases other than those of a petty or summary nature (such as would be tried by single Magistrates or Quarter Sessions at home) is the principal right of this kind.

For the definition of an European British subject the student will refer to section 4, clause *u*.

And, as I urged, in important forest cases should be moved to do so. My own experience has been that important points get overlooked in these Revision cases. And unfortunately so much prejudice still lingers about forest matters that it is possible that cases may be so reported as unconsciously to mislead as to the facts and surroundings of the case. In such cases it is most important that some one instructed in the many little known principles of forest law, should be heard and allowed to represent the other side. ~

For the enquiry into cases previous to committal or their trial, it is necessary that the Magistrate should be himself a European, British subject, that he should be a Justice of the Peace<sup>9</sup> and a Magistrate of the first-class: all three qualifications must be possessed concurrently. (Sections 443-4.)

Any Magistrate who can entertain complaints may go as far as taking up the complaint, examining the complainant, and issuing the process to compel appearance; but if not competent to hear the case he must make the summons or warrant returnable before a Magistrate who is. (Section 445.)

Any Magistrate's case (schedule II), in which an European British subject is charged, may be tried by a competent Magistrate; but the sentence cannot exceed three months' imprisonment or fine up to Rs. 1,000, or both; so that if the case requires a heavier sentence than that, and if it is an offence not punishable with death or transportation for life, the case is committed to the Sessions, or, if punishable with death or transportation for life, to the High Court.

The power of Sessions Judges in these cases is also limited by section 449.

When the trial is with Assessors, or with a Jury, the prisoner<sup>9</sup> may require that not less than half in either case, shall be Europeans or Americans or both. (Section 451.)

European British subjects in custody, and considering such custody unlawful, have a special right (section 456) of applying to a High Court, in manner described in the section.

It is the duty of the accused to claim that he is an European British subject; there is an appeal from an order declaring that the prisoner is not an European British subject in the manner described in section 453. A person not claiming to be a European British subject is held to waive his privilege<sup>10</sup>.

<sup>9</sup> Now appointed under Act II of 1869: the use of this appointment practically amounts to this only, that it is a formal way of investing particular Magistrates with power to act in European British subjects' cases.

<sup>10</sup> The privilege can be forfeited also under certain circumstances of vagrancy. (Act XXI of 1869, section 30.)